JOEL PARKER:

SOMETIME CHIEF-JUSTICE OF THE STATE OF NEW HAMPSHIRE,

AND

ROYALL PROFESSOR OF LAW IN THE LAW SCHOOL OF HARVARD UNIVERSITY.

FROM THE AMERICAN LAW REVIEW FOR JANUARY, 1876.

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By George Silsbee Hale.

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1878, Sept. 20.
From the
President's office.

JOEL PARKER.

JOEL PARKER died at his residence in Cambridge, Mass., on the seventeenth day of August, 1875. He was born in Jaffrey, in the State of New Hampshire, on the twenty-fifth of January, 1795, the sixth in descent from Abraham Parker, supposed to have been a native of Marlborough, in Wiltshire, England, who was admitted a freeman in Woburn, Mass., in 1645. His father, Abel, who was born in Westford in 1753, having removed to Pepperell, was enrolled, in 1774, in Capt. John Nutting's company of minute-men, attached to the regiment of Col. William Prescott, and marched with his company, on the nineteenth of April, 1775, to meet the British troops on their expedition to Concord. He was too late to share in the glory of that day; but upon his arrival at Cambridge enlisted in the same company under Col. Prescott, to serve until January following, and was stationed at that place. He was not included in the troops detailed for the occupation of Bunker's Hill; but, by giving his ration of spirit to a comrade, obtained by exchange a share in the battle, and there received a severe wound in the leg from a musket-ball, which his descendants still preserve. He served during the war, also, in New York and Rhode Island, and held commissions as an ensign and lieutenant.

He married, Oct. 14, 1777, Edith, daughter of Jedediah Jewett, of Pepperell; and in May, 1780, removed to Jaffrey, N. H., "settled in the unbroken forest, and cleared his farm himself, with such assistance as he could obtain." To use his own words, "Thus ended my military career, as on the fifth day of May, 1780, I moved into this town, which prevented my pursuing my natural inclination, which was that of a soldier;" a martial inclination of which his son's indisposition to retreat from a contest seems a natural inheritance. Here he resided for more than half a century. "He was a tall, stately man," writes a surviving contemporary of his son, "grave in deportment, and commanded my respect not more on account of his talents and moral worth than for his lameness, occasioned by a musket-ball which was received by him at Bunker Hill."

Abel Parker held many offices of dignity and confidence in the town and state; was for twenty years a Judge of Probate; sat in the convention which adopted the Federal Constitution; voted for John Quincy Adams in the electoral college of 1824; and died full of years and honors in 1831, leaving four sons, the survivors of nine children, — Edmund, who became a Judge of Probate for Hillsborough County; Asa, who held the same office for Cheshire County; Isaac, a prosperous and respected merchant in Boston; and his youngest child, the subject of this sketch. Mrs. Parker was a deeply religious woman, of vigorous intellect and marked character.

Such was the stock from which Joel Parker sprang, and such the domestic influences under which he was nurtured. After studying in the Academy at Groton, where the late President James Walker was one of his schoolmates, he entered the sophomore class at Dartmouth College in February, 1809, at the early age of thirteen, and graduated in 1811, not yet seventeen years of age, small of stature, but tenacious of his dignity. "Well, my little fellow," said the stage-driver of the coach which brought him from Hanover, "I suppose we must take you for half-fare." "I shall pay the whole or none," was his reply. The Rev. Dr. William Cogswell, and Daniel Poor, the missionary of Ceylon, Amos Kendall, Chief Justice Shepley, of Maine, and Judge Nathaniel Wright, of Cincinnati, were among his classmates. After his graduation he studied law at Keene, and with his brother Edmund at Amherst, and entered the bar of Cheshire County, at the October term in 1817, at the former place, where he at once engaged in practice.

In the year 1821, contemplating a change of residence, he visited the West,[1] and was admitted to practice in the Circuit Court of the United States at Columbus, Ohio, in January, 1822; but, fortunately for his native State, returned in the latter year, and devoted himself assiduously to his chosen pursuit.

Free from domestic cares, affianced only to his profession, he early gained an honorable position by the steady exercise of natural abilities well adapted to its pursuit. He was industrious,

[1] The passport, of which we append a copy, with which the young lawyer set out on his journey, while it contains a personal description of the subject of our sketch, also furnishes an interesting illustration of the change which less than fifty-five years have wrought in the social relations of the different States of the Union. The least

thorough, minute, painstaking, cautious, persistent, and untiring. "Judge Parker's mode of practice in the trial of cases," writes an early professional associate, who still enjoys a ripe and honored age, "to take down the testimony in full of the witnesses in writing, and to cross-examine them at great length as to all the circumstances they might know relative to the case, contributed greatly to change the previous practice of the witness's first telling his story of what he knew, followed by a brief cross-examination, with only a few notes, made by the counsel, of the leading points of the testimony."

A slight circumstance, indeed, to particularize in the management of cases, in these days of note-taking and stenographers, but illustrative, nevertheless, of the times, and of the introduction of a more thorough and laborious mode of practice.

adventurous visitor to Alaska would not think to-day of invoking protection or recommendation in this form: —

STATE OF NEW HAMPSHIRE.

BY HIS EXCELLENCY SAMUEL BELL, *Governor and Commander-in-Chief of the said State of New Hampshire, one of the United States of America.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING.

KNOW YE THAT Joel Parker, Esq., the bearer hereof, of the age of twenty-six years, of the height of five feet and nine inches, of light complexion, brown or dark hair and blue eyes, a native citizen of the United States, and an inhabitant of the town of Keene, in this State, is a person of fair reputation, and respectable standing in society.

[SAMUEL BELL.]

The said Joel Parker being about to depart from this State, and to travel to and visit other parts and places, —

IT IS DESIRED, That all within the said United States of America, and that all foreign States, potentates, and powers, and all others in every quarter of the world who may see these presents, and whom it may concern, do permit him to pass safely and freely without giving or permitting to be given to him any hindrance or molestation in his voyage or voyages, or in his journeyings or travels by land, while pursuing his lawful business and affairs; but, on the contrary, affording all requisite protection and assistance, as would be granted and afforded here to persons coming in similar manner recommended to protection and assistance.

IN TESTIMONY WHEREOF, We have delivered to him this PASSPORT, signed by our own hand, with the seal of our said State annexed, and countersigned by our Secretary of said State.

Given at Concord this seventh day of June, anno Domini one thousand eight hundred and twenty-one, and in the forty-fifth year of the Independence of the United States of America.

By his Excellency's command.

SAM. SPARHAWK, *Secretary.*

There was nothing in the place or time to make his early career eventful. In 1830 he added to his reputation by assisting in the defence of Daniel H. Corey for the murder of Matilda Nash, and published a report of the trial. Corey was acquitted on the ground of insanity; a subject of which Judge Parker afterwards, in the interesting case of Prescott, — tried before him in 1834 for the murder of Mrs. Cochran, and executed under circumstances which left grave doubts of the justice of the punishment, — showed a wise appreciation, in advance of the public feeling, and in which he manifested his interest as one of the early movers in the establishment of an asylum in New Hampshire for the insane.

He was a member of the Legislature of New Hampshire in 1824–26: and the Hon. George W. Nesmith, who sat with him in this body, and afterwards upon the bench over which he had presided, remarks that his "recollection as to the standing of Judge Parker as a legislator is, that he seldom spoke without previous study or diligent investigation of the matter under discussion; and that he was learned and useful and uniformly able in debate, and his remarks were generally listened to with great favor."

"In 1832 Mr. Parker brought forward a bill prepared by himself, abolishing the then existing Court of Common Pleas, and allowing one judge to preside at the trial of civil cases, and in all criminal cases except murder and treason. This bill was also the foundation of chancery practice in this State [New Hampshire]. The strongest objection made to it arose from the fact that it conferred too much labor and responsibility upon one judge to carry through a term alone. The Committee on the Judiciary, which had the charge of the bill, refused to report it until sanctioned by Chief Justice Richardson in advance. His assent was obtained in writing, and the Judiciary Bill became a law."[1] At the same session, one of the judges of the Superior Court of Judicature, the highest judicial tribunal of the State, was removed from his office upon an address of the legislature; and in January, 1833, Mr. Parker's

[1] "Mr. Bell remarked," says Judge Nesmith, speaking of a trial where Parker was counsel, "that he was sustained in one of his legal positions by a case in the New York Reports that went *in quatuor pedibus* in his favor. 'Of course,' said Parker, 'that must be a beastly case.' — 'Yes,' said Judge Richardson: 'you had better keep clear of the *legs* of that creature.'"

townsman, Samuel Dinsmoor, then Governor of New Hampshire, appointed him, at the age of thirty-eight, to fill the vacancy. This office he held till 1838, when, on the death of Chief Justice Richardson, he became his successor. Judge Parker's opinions are contained in thirteen volumes of the New Hampshire Reports, from the 6th to the 18th inclusive, commencing with the case of *Leeds* v. *Sayward*, 6 N. H. 83, and closing with that of *Crane* v. *Ingalls*, 18 N. H. 613. During this period the reports were prepared by the members of the court, then consisting of four judges, — both judges and reporters; — for "the gaunt rigor of democratic economy deprived the bench in that State of a natural adjunct." And we find a silent testimony of the industry and fidelity with which he performed his labors in the large proportion which fell to his share. Of the twelve hundred and forty-four cases reported during this period, and comprising seven thousand four hundred and fifty pages, five hundred and ten, covering three thousand three hundred and fifty-six pages, contain opinions from his pen. So lies buried, we had almost said, the labor of our great judges; but it is not buried, or, if buried, it is but to spring up and bear fruit in the harvest ripened under the "gladsome light of jurisprudence." If among these cases there are many whose interest terminated with the execution, that "fruit of the law" which they bore to the successful party, there are yet many which have contributed to promote justice, to elevate the community, whose rights they declared and whose conduct they controlled, and which still exercise an influence over a vast and increasing population who accept it unconscious of its source. Judge Parker's opinions are characterized by independence, thorough research, and careful study; not wanting in a quiet confidence springing from self-reliance, and from a consciousness of the labor and investigation which fortified it. Among these may be mentioned, as touching upon subjects of permanent interest and illustrating his intellectual qualities and habits, the early case of *Britton* v. *Turner*, 6 N. H. 481, in which by a clear and well reasoned statement he lays down an equitable rule on a much-vexed question in reference to the liability on a special contract for labor, not completed according to its terms; holding substantially that the laborer is entitled to recover, not upon the contract, but for the benefit actually enjoyed by the other party, not exceeding the contract price, but is liable for all the damages by

the breach, in recoupment, to the amount of the claim, in his own action, or to their full amount in a cross-action. This decision, differing as it does from other cases in courts of authority, and even from one previously decided in New Hampshire (5 N. H. 343), illustrates the independence, and sense of justice, with which he approached such inquiries, as well as the clearness of his reasoning. *State* v. *Rollins*, 8 N. H. 550, was an indictment at common law for kidnapping a negro boy by selling him to a person in Alabama, with the intention that he should be taken into that State, and held in servitude there until majority; carrying him into another town in New Hampshire, and delivering him there, in which it became necessary to inquire into the extent to which the common law was adopted in that State, and its application to this case. Judge Parker declared that it was not material that the intention was to transport to another of the United States. "The Constitution of the United States," he said, "binds them together for no such object as this."

A tendency may be observed in his decisions to recognize the rights of married women. In *Parsons* v. *Parsons*, 9 N. H. 309, *Marston* v. *Carter*, 12 N. H. 159, and *Wheeler* v. *Moore*, 13 N. H. 478, he went beyond the authorities in Massachusetts in protecting their interests against the creditors of the husband, in the absence of any exercise by him of his marital right; and it is said that he interested himself in modifying the laws of the State in their favor. In *Pierce* v. *The State*, 13 N. H. 536, he denied the right of the jury to decide the law in criminal cases, and maintained the constitutionality of an act prohibiting the unlicensed sale of liquors. The case was hotly contested, and was afterwards referred to by him in the debates in the Massachusetts Constitutional Convention.

These cases may serve to illustrate the positive and independent character of the man; but we have not space to review his opinions at length and in detail.

The *Law Reporter* for May, 1844, Vol. VII., contained a notice, from the pen of Charles Sumner, of the tenth volume of New Hampshire Reports, in general laudatory; although he said, "Their learning does not show the taste and tincture of the soil of a distant antiquity." Of Judge Parker he wrote, "It will not be unjust to his associates to distinguish Mr. Chief Justice Parker as entitled to peculiar honor for his services on the bench

He may be justly regarded as one of the ablest judges of the country." But he attacked with elegant animosity "the use of a barbarism like 'loaned,'" which appeared in certain of the opinions of the Chief Justice. The New Hampshire reporter flew to the defence of the judge by the citation of numerous precedents which he borrowed to defend his "loan;" and even disparaged "lend" by quoting Webster, who says that "lend is a corrupt orthography of len or loan, or derived from it;" while he cited counsel and court in *Sumner's Reports* with the remark, "If it may be supposed that the published arguments of the counsel in this last case were drawn up by the accomplished scholar who then filled the office of reporter, perhaps the authority is none the less stringent on the present occasion." Quoting and indorsing the *Law Reporter's* compliments of the Massachusetts Bench, he compares the references of the New Hampshire judges, in the volume criticised, to legal authorities prior to the reign of George III., and extending back to the time of Dyer and Coke, with those in a late volume of Mr. Metcalf's Reports, which were less than half in number, he said, as an illustration of their "comparative taste and tincture of the soil of a distant antiquity."

But Sumner, in an entertaining reply, which our readers may be glad to find in the same volume of the *Law Reporter* (p. 155), buried the obnoxious word under that accumulation of quotations which characterized his writing, here quite fitting, but of which a witty friend once said, that those which he could not get into the text ran over into the notes like superabundant gravy.

The event which brought Judge Parker more conspicuously before the public, and undoubtedly contributed justly and largely to give him a wide and established reputation for vigor, independence, learning, and capacity, was his controversy with Mr. Justice Story of the Supreme Court of the United States in regard to the proper construction of a clause — it might even be said the meaning of a word — in the Bankrupt Law of 1841; a controversy which became political in other hands, and threatened to reach the magnitude of a conflict between the United States and New Hampshire.

After the experiences of this generation, such a collision seems trifling; but it involved subjects of grave importance, and was a contest between no insignificant combatants, — not without interest at this day to a student of common or constitutional law.

It began in 1842, when Story and Parker were each in the full vigor of judicial life, and enthusiastic crowds of young men were learning the science of the law from Story's lips. It ended seven years after, when Story had passed away, and Parker was lecturing where Story taught to young men who now revere the memory of both. The struggle had ended: he had laid aside the honor and labors of the office which required him to engage in it; and, in the first year of his service as a professor in the school to whose success and reputation Story had so largely contributed, the court which Story had adorned declared the survivor victorious. Like Entellus, he might say, —

"Hic victor cestus artemque repono."

The Bankrupt Law of 1841, drawn by Judge Story, contained this provision: —

"And provided, also, that nothing in this act contained shall be construed to annul, destroy, or impair any lawful rights of married women, or minors, or any liens, mortgages, or other securities on property, real or personal, which may be valid by the laws of the States respectively, and which are not inconsistent with the provisions of the second and fifth sections of this act."

The second section relates chiefly to preferences, and the fifth to the allowance of claims.

Under the previous system in the New England States, by which creditors ran a race of diligence in seizing the property of a debtor, attachment on mesne process was a well-known remedy; and the question at once arose, whether the proviso of the statute protected from the operation of the Bankrupt Law the rights acquired by such an attachment.

The earliest reported cases in which the subject was considered appear to be those of *Ex parte Cheney*, 5 L. R. 19, and *Ex parte Foster*, 5 L. R. 55, 2 Story, 131, which were decided by Judge Story in 1842. As an illustration of the widely-spread importance of the questions involved, and a part of their history, we append a list of some decisions in relation to this subject, or to the supervisory power of the District Court.[1]

[1] *Ex parte Cheney*, 5 L. R. 19, March, 1842; *Ex parte Foster*, 5 L. R. 55, 2 Story, 131, April, 1842; *Parker* v. *Muggridge*, 5 L. R. 351, 2 Story, 334, May, 1842; In the matter of *Allen et al.*, 5 L. R. 362, Sept. 1842; *Downer* v. *Brackett*, 5 L. R. 392, 21 Vt. 599. Sept. 1842; In the matter of *Cook*, 2 Story, 876, Oct. 1842; *Haughton* v. *Eustis*,

In the case of *Ex parte Foster*, the bankrupt, whose property had been attached before the petition was filed, on mesne process from a State court of Massachusetts in a pending action, applied to the District Court of the United States for the District of Massachusetts for an injunction to restrain the creditors from proceeding further against the property attached, and requiring them to surrender it to the assignee. The respondents claimed that they were entitled to hold it under the attachment, as a lien valid by the laws of Massachusetts. The district judge ordered the question, whether, on the facts, the injunction should issue, or any and what relief be granted, to be certified to the Circuit Court.

The case was argued before Mr. Justice Story in that court, as he said, "with great ability and learning." With like ability and learning, and with his usual affluence of argument and authorities, he considered the question presented at great length.

"An attachment," he said, "does not come up to the exact definition or meaning of a lien, either in the general sense of the common law, or in that of the maritime law, or in that of equity jurisprudence;" but assuming that it constituted "a lien or security to or for the benefit of the attaching creditor, still," he said, "it is but a contingent or conditional lien or security arising under a mere remedial process." The question still remained, whether it was within the proviso of the law. If it were, there was still an ulterior question, whether the creditor could be allowed to obtain a judgment before a discharge, which, if obtained before a trial, would be a bar to the suit, and thus, by a race of diligence, obtain a preference in violation of the whole policy of the act.

5 L. R. 505, Oct. 1842; *Ames* v. *Wentworth*, 5 Met. 294, Nov. 1842; *Smith* v. *Brown*, 14 N. H. 67, July, 1843; Matter of *Rowell*, 6 L. R. 298, Aug. 1843; *Kilborn* v. *Lyman*, 6 Met. 299, Sept. 1843; *Fiske* v. *Hunt*, 2 Story, 582, Oct. 1843; *Kittredge* v. *Warren*, 14 N. H. 509, Jan. 1844; *Hubbard* v. *Hamilton Bank*, 7 Met. 340, March, 1844; *In re Bellows* and *Peck*, 7 L. R. 119, 3 Story, 428, July, 1844; *Kittredge* v. *Emerson*, 15 N. H. 227, July, 1844; *In re Reed*, 21 Vt. 634, 1844; *Everett* v. *Stone*, 3 Story, 446, Sept. 1844; *Clarke* v. *Rist*, 3 McLean, 494, Dec. 1844; *Smith* v. ——, 4 Edw. Ch. N. Y. 653, 1845; *Storm* v. *Waddell*, 2 Sandf. Ch. N. Y. 494, July, 1845; *Peck* v. *Jenness*, 16 N. H. 510, July, 1845; *Colby* v. *Ledden*, 17 N. H. 273, July, 1845; *Davenport* v. *Tilton*, 10 Met. 320, Oct. 1845; *Shaffer* v. *McMaken*, 1 Ind. 148, Nov. 1848; *Peck* v. *Jenness*, 7 How. 612, Jan. 1849; *Colby* v. *Ledden*, 7 How. 620, Jan. 1849; *In re Christy*, 7 L. R. 553, 8 How. 292, Jan. 1845; *Norton* v. *Boyd*, 8 How. 426, Jan. 1845; *Stinson* v. *McMurray*, 6 Humph. 339, Dec. 1845; *Russell* v. *Cheatham*, 16 Miss. (8 Smed. & M.) 703, Jan. 1847.

Without considering it necessary for the case to decide that it was not within the proviso, he considered it perfectly clear that a discharge obtained before judgment would be pleadable in bar to the suit, and that it was the duty of the District Court to control the creditor in proceeding further than was necessary to secure his ulterior rights, until it should be ascertained whether the debtor was entitled to a discharge, and that he should be required to act in the suit under the direction of that court; and an order was made in accordance with this opinion.

The question arose again in September, 1842, in *Parker* v. *Muggridge*, 5 L. R. 351, 2 Story, 334, in which Isaac Parker, the brother of Judge Parker, was protected by Judge Story in his claim under an attachment, on the ground, that, by the operation of agreements between the plaintiff and the bankrupt, the attachment had been made to constitute an equitable lien, but without modifying *Ex parte Foster*. In December, in the Matter of *Cook*, 5 L. R. 443, 2 Story, 376, he held, that, when a judgment had been obtained before the filing of the petition, a lien was thus acquired which was within the saving clause of the Bankrupt Act. He declared that it had been a matter of surprise to him to see how generally the case of *Ex parte Foster* had been misunderstood and misinterpreted, and explained and reiterated his decision. So the matter stood in 1842. The next year, in July, 1843, the question appears to have been presented to the Superior Court of New Hampshire in the case of *Smith* v. *Brown*, 14 N. H. 67; and the Chief Justice remarked that it was not "necessary at the present time to go into the question, whether a mere attachment is or is not a *lien* within the proviso of the second section of that act." In *Kittredge* v. *Warren*, 14 N. H. 509, however, the court were required to meet it, early in the following year; and the Chief Justice, in an elaborate opinion of some thirty pages, announced and vigorously sustained the decision, that an attachment made in good faith, before any act of bankruptcy or a petition, was a lien within the proviso of the Bankrupt Act, and that the proviso protected also the right to make the attachment effectual by a proper judgment and execution. He quietly quotes from Judge Story's work on Bailments the phrase, "but subject to the lien of the attachment," and subsequently says, "It is matter of great regret that we cannot concur in the views of the very learned judge who delivered the opinion" in *Ex parte Foster*, but finally

declares "the extended examination we have made has left no reasonable doubt upon our mind respecting the result." The matter did not rest here. Jenness, a Massachusetts creditor of Bellows & Peck in New Hampshire, had attached their property in October, 1842. The debtors subsequently filed a petition to be declared bankrupts in the District Court for that State, and obtained their discharge. The assignee obtained from that court an order upon the attaching officer to deliver the property attached to him; and the sheriff thereupon applied to the District Court by a petition setting forth these facts, the decision, after the order, in *Kittredge* v. *Warren*, and his perilous position as an officer of the State of New Hampshire, between the hazards of disobedience to the one or the other authority, and praying the court to rescind the order, or to take such action that he might not be put in jeopardy. Thereupon the questions thus raised were certified into the Circuit Court before Mr. Justice Story, who, in July, 1844 (in the Matter of *Bellows* and *Peck*, 3 Story, 428), declared his intention not to discuss the question whether the attachment was a lien within the proviso, while stating more positively than before his opinion that it was not, and that he felt not the slightest inclination to depart from his previous decisions, but adhered to them with undoubting confidence. He considered the right of the District Court to issue an injunction, to prevent a creditor, who had made an attachment, from obtaining a priority of satisfaction out of the assets of the bankrupt, pending the proceeding in bankruptcy, clear in principle. "It is a question," he said, "of which that court had exclusive cognizance; and it is not a matter inquirable into elsewhere, whether the jurisdiction was rightfully exercised or not;" and he declared that it had never occurred to him that it was a matter susceptible of any judicial doubt, that a discharge *pendente lite* was a good bar, and might be so pleaded, until he saw "the able and learned opinion of the Superior Court of New Hampshire in *Kittredge* v. *Warren*."

"I retain, therefore," he said, "the opinion which I have already expressed in the case *Ex parte Foster* and the other cases already cited. And with the greatest respect for the opinion of the learned court of New Hampshire upon this point, in *Kittredge* v. *Warren*, I dissent from it *toto animo*. It has not relieved my mind from a single doubt. It has met the question in a manly and direct manner; and reasoned out the case, as far as it

can be reasoned on that side, fully and fairly. It has failed to convince me; and I shall therefore act upon my own judgment until the Supreme Court of the United States has instructed me otherwise."

Holding these opinions, he declared that "if the validity of the discharge, as such, is not contested, and the State court should, as in the case of *Kittredge* v. *Warren*, upon a demurrer, hold the discharge invalid as to the property attached, I have no doubt that it would be the duty of the District Court to grant an injunction against the creditor, his agents, attorneys, and the sheriff holding the attached property, to restrain the creditor from proceeding to judgment; or, if he has proceeded to judgment and execution, to restrain the sheriff from levying on the property on the execution; and, if the property has been sold by the sheriff, to compel him to bring the proceeds into court. And it will be no excuse or justification to the sheriff, after notice, that he has paid over the proceeds to the creditor or to his agents or attorneys. And the proceeds may be followed by the proper District Court into the hands of the creditor and his agents and attorneys wherever he or they may reside. Such, I do not scruple to affirm, is, and should be, the practice. It would be an utter renunciation of the rightful authority and jurisdiction of the courts of the United States to allow any creditor to avail himself of any unjust and unlawful advantage, merely because his suit is depending in a State court. The laws of the United States are, to the extent of the constitutional limits, paramount to the authority of those of the States. The courts of the United States are the appropriate expounders of the laws of the United States; and are not bound to follow the exposition of these laws by the State courts, unless so far as they approve themselves to their own judgment." And, in his answer to the District Court, he gave his opinion that justice did not then require an injunction to deliver up the property; and that, if awarded, it should be modified so far as to permit the officer to retain the property until further order, and to await the final action of the State court. "And that in case the State court, not contesting, but admitting, that the discharge of the bankrupts was obtained *bona fide* and without fraud, and as such is valid as a discharge from the debts provable under the bankruptcy, should nevertheless proceed to award judgment for the plaintiffs in the said suits

for their debts so provable, on account of such attachments therein, then that such judgment ought to be treated as a nullity by the District Court, and as not binding therein. And that, therefore, it will become the duty of the District Court, upon the petition and application of the assignee of the bankrupts therefor, to direct an injunction to the plaintiffs in such suits respectively (if such injunction has not already issued), prohibiting them respectively from levying any executions on the said judgments, or any of them, upon the property attached in the said suits; and at the same time to direct an injunction to the petitioners, prohibiting them, or either of them, from proceeding to levy the same executions on the property so attached, or any part thereof, but to deliver up the same forthwith to the assignee of the said bankrupts, to be distributed as a part of the assets of the said bankrupts. And if any of the said executions shall have been by them levied upon the said property attached, then to pay the moneys raised thereby into the said District Court. And in case of the disobedience of such order or injunction by the said plaintiffs, or the petitioners, then the District Court ought to proceed to enforce obedience thereto, as in other cases of the violation of injunctions."

But the controversy now passed into the political arena. On the 5th of June, 1844, his Excellency the Governor of New Hampshire sent a message to the legislature, calling attention to these opposing decisions of the State and Federal courts, and the supervisory power exercised by the latter, in view of the rights and security of the citizens of the State who might be litigating the questions involved.[1] The message was referred by the House to a committee of seven; and, while it was still in their hands, the Chief Justice had occasion to consider the subject again in the case of *Kittredge* v. *Emerson*, 15 N. H. 227, decided in July, 1844. Before this, a skirmish took place in another corner of the State. The action in which the attachment was made was pending there, and the defendants had pleaded their discharge in bankruptcy, to which the plaintiff replied the attachment. The defendant pleaded in rejoinder the order of the District Court that the property should be delivered to the assignee, and its ser-

[1] This message, we have high authority for stating, was, in fact, from the pen of a learned member of the Suffolk Bar, who still lives to enjoy the respect of his associates.

vice on the sheriff; and thereupon the plaintiff moved to direct a repleader on the ground that the issue tendered by the rejoinder was immaterial. Perhaps the point was not *nodus vindice dignus;* and Gilchrist, J., announced the decision of the court, that a repleader could not be awarded on motion until the pleadings were closed. And the combatants drew off their forces for a time.

The question, whether an attachment was a lien, was interesting and important. It was one, however, upon which judges might differ — as they often do — without any attack except upon each other's intellectual processes. But that presented by the claim which Judge Story asserted in the matter of *Bellows* and *Peck* was one which brought the different tribunals into immediate collision. That in his opinion the Superior Court of New Hampshire was wrong, he had a right to declare. That he could make his opinion the rule of their action, seemed to them a grave and startling assumption. It was familiarly said that this great judge absorbed jurisdiction as a sponge took up water. That this sponge should take into its pores the highest tribunal of a sovereign State, that tribunal could not admit.

In *Kittredge* v. *Emerson*, the Chief Justice of New Hampshire, with great power and acuteness, enforced and defended his former opinion, and criticised the reply of Judge Story. This is no place to reproduce the arguments of the combatants over the body of a lifeless question; but they may be read with interest and profit by the student of law, or the lover of vigorous, caustic, and animated legal discussion.

"There is no principle, or pretence of a principle, of which we are aware," he said, "on which we can admit the right of the circuit or district courts in any manner to interfere and stop the execution of the final process of the courts of this State. It is an assumption of power that cannot be tolerated for a single instant. Even if the judgments might be regarded as nullities, that is not an admissible remedy; but we do not rely on that. So long as our judgments stand unreversed, the plaintiffs will be entitled to receive the fruits of them by an appropriation of the property attached and held as a security." "We have faith to believe that the learned judge of the District Court will not assume such a control over our dockets as further to enjoin the plaintiffs in actions pending here from proceeding in such manner as the

courts of the State may allow, or such a control over our final process here as to attempt to stop its execution.

"If our opinions respecting his authority are correct, a resort to coercive measures to enforce an injunction, or to punish a disregard of it, might possibly not be entirely safe, for those, at least, who should attempt to execute the order; but this is a matter upon which we shall not enter.

"Should our faith on this subject prove unfounded, our course is clear."

And he closed his opinion by declaring the duty of the court in language whose studied opposition to that adopted in the case of *Bellows* and *Peck* may be, perhaps, best understood by comparing the following quotation from his opinion with the language of Judge Story quoted on a preceding page: "We take occasion to say, in conclusion, that if the plaintiffs, in this and other cases similarly situated, shall ask the interference of this court, it will be our duty to enjoin and prohibit the bankrupt, and his assignee, the creditors, and all claimants of the property attached, from attempting to procure any process, from any court which is not acting under the authority of this State, with a view to prevent the entry of judgments in such suits, or to prevent the execution of the final process issued upon the judgments when obtained; and from applying for, or attempting to execute, any summary process, order, or decree of any court, with the view and purpose of taking from the creditors, or their attorneys, the fruits of such judgments as they may obtain, on account of any supposed want of right in the court to render those judgments, or any supposed invalidity of such judgments, so long as they shall remain in full force and unreversed. And it will farther be our duty, on application, to enjoin and prohibit all persons from making any application, or instituting any proceedings, founded on any supposed breach of an injunction, order, or decree, issued by any tribunal not acting under the authority of this State, by reason of any proceedings in the courts of this State, arising after the bankrupt has pleaded his discharge. And if any such injunction shall be issued by us in any case, it will be our duty to punish any infraction of it when brought to our notice, by prompt action, and by all the modes in which such orders are usually enforced." In December following, the committee of the New Hampshire Legislature made their report,

reciting the facts of the case, and declared their opinion, "That the District Court of the United States for the District of New Hampshire has no revisory jurisdiction over the judgments of the courts of this State; that the judgments of our courts are conclusive in all cases coming under their jurisdiction until reversed; that the proceedings before those courts are not to be made the subject of inquiry by the District Court, and that their judgments are not to be treated as '*nullities*' until reversed; that it is the duty of those who are intrusted by the laws of the State to execute the judgments of the courts to obey all lawful precepts to that effect, and that they cannot lawfully be subjected to penalties or imprisonment for such obedience. The committee are also of opinion," they said, "that the courts of this State possess ample power to enforce their own judgments, and to protect their officers in the execution of them, without additional legislation." They also declared their opinion that the "positions established by the Superior Court, in the cases above referred to [*Kittredge* v. *Warren*, and *Kittredge* v. *Emerson*], are based on the soundest constitutional law; that they are enforced by great legal research, and established by high legal authorities; and that these positions have met with the approbation of the legal profession here and elsewhere, and that in our own State they have received the sanction of public opinion." And they submitted, for the consideration of the House, the following resolutions: —

"*Resolved*, That the Supreme Court of the United States is the only constitutional tribunal which can in any case revise and correct, when erroneous, the adjudications of the State courts.

"*Resolved*, That the Superior Court of Judicature of this State has ample power to enforce its judgments, and to protect its officers in the execution of its process."

On the 26th of December the House resumed the consideration of these resolutions. It was moved to amend them by striking out all after the word "Resolved," and inserting instead thereof the words, "That it is inexpedient to legislate upon the subject." But the amendment was rejected; and the Speaker, Hon. Harry Hibbard (not a member of the political party to which the Chief Justice belonged, so far as a Chief Justice belongs to any party), took the floor, and moved to amend the resolutions by adding the following: —

"*Resolved*, That we highly appreciate and heartily approve the firm and decided stand which has been taken by the judges of our Superior Court in opposition to the unwarrantable and dangerous assumptions of the Circuit Court of the United States in the recent controversy between said courts, growing out of the operation of the Bankrupt Law; and that, in our opinion, they ought to and will be sustained in that stand, if need be, by the united voice and power of the government and people of this State."

All the resolutions were adopted, and made joint resolutions. The House refused to lay them on the table, and passed them by a vote of 190 ayes to 19 noes.

The Legislature of the State thus sustained its Court; but, fortunately, no actual collision occurred. We do not find that the subject came before Judge Story again, officially, in the Circuit Court. In the case of *Everett* v. *Stone*, 3 Story, 446, in the district of Maine, at the September term, in the same year, he had declared that the result of the reasoning in *Ex parte Foster* was, "that if an attachment is made by any creditors, and afterwards, and before judgment in the suits, the debtor files his petition in bankruptcy, and before the debtor can regularly be declared a bankrupt, the creditors, knowing all the facts, take judgment, and levy their execution upon the property attached, and the debtor is afterwards declared a bankrupt upon his petition, the judgment and levy are to be treated as a fraud upon the Bankrupt Act, designed to produce an undue preference against the policy of that act."

He had directed a modification of the injunction in the matter of *Bellows* and *Peck* (*ante*), declaring at the same time the duty of the court, if the State court should proceed to award judgment for the plaintiff on account of the attachment, without regard to a valid discharge, to act upon the petition of the assignee.

The highest State court did finally proceed to award such judgment; but the assignee did not thereafter invoke the authority of the District Court.

In the case of *Jenness* v. *Peck*, pending in the Court of Common Pleas for the County of Cheshire, the parties agreed at the March term, in 1845, that the pleadings might be amended, judgment rendered on the defendant's demurrer, and the case carried to the Superior Court by either party on a writ of error; and that the property attached should be sold, and the proceeds deposited in

the names of the attaching officers and assignee to await the final judgment, and then appropriated in accordance therewith. Judgment was rendered for the plaintiffs; and thereupon, to borrow, in part, the quaint phrase of the judicial formula, on the 16th of June, A.D. 1845, the State of New Hampshire sent its mandate, under the attestation of Joel Parker, Esq.: "To our trusty and well-beloved Joel Parker, Esquire, Chief Justice of our Court of Common Pleas," declaring that, "whereas, in the record . . . as well as in giving judgment of a suit . . . before your companions, then our justices of said court . . . as it is said, manifest error hath happened, to the grievous damage of the said Peck and Bellows, as we by their complaint perceive, we . . . command you that . . . you . . . send us the record and process of the suit aforesaid . . . so that we may have them at our Superior Court of Judicature . . . at Newport . . ." There Joel Parker, Esq., in his capacity of Chief Justice of the Superior Court,[1] carefully inspected the record, and found no error therein; and the higher court affirmed the judgment.

The case came before the court on the plaintiff's demurrer to the defendant's rejoinder to the allegation of the attachment, setting forth the order of the District Court to deliver the goods attached to the assignee.

In the interval between the former decision of the Superior Court and the argument on this demurrer, the case of *Ex parte The City Bank of New Orleans, in re Christy*, 7 L. R. 553, 3 Howard, 292, had been decided by the Supreme Court of the United States at the January term of 1845, and the opinion of the court delivered by Mr. Justice Story.

This was an application to the Supreme Court for a writ of prohibition to the District Court for exceeding its jurisdiction. "Upon this argument," he said, "the principal questions which have been discussed are, first, what is the true nature and extent of the jurisdiction of the District Court sitting in bankruptcy; secondly, whether, if the District Court has exceeded its jurisdiction in this case, a writ of prohibition lies from this court to that court to stay further proceedings." He discussed at length the former, and said, "We entertain no doubt that . . . the District

[1] There were then two courts in New Hampshire, — the Superior Court of Judicature and the Common Pleas. The judges of the former sat also on the Common Pleas bench, and Judge Parker was the Chief Justice of each.

Court does possess full jurisdiction to suspend or control such proceedings in the State courts," (referring to proceedings by any creditor, or person having any adverse interest, to enforce his rights or obtain remedial redress against the bankrupt or his assets after bankruptcy) "not by acting on the courts, over which it possesses no authority; but by acting upon the parties, through the instrumentality of an injunction or other remedial proceedings in equity."

It was decided, that, as the District Court had not exceeded its jurisdiction, the question, whether the Superior Court could issue the writ, was not necessary to be decided. He added, however, "But it may be proper to say . . . that we possess no revisory powers over the decrees of the District Court sitting in bankruptcy; . . . and that we know of no case where this court is authorized to issue a writ of prohibition to the District Court, except in the cases expressly provided for by the thirteenth section of the Judiciary Act of 1789, c. 20; that is to say, when the District Courts are proceeding as Courts of Admiralty and Maritime Jurisdiction."

It was obvious, then, that the determination of the latter question rendered it unnecessary to decide the former, and would ordinarily seem to be the first in order. If the Supreme Court could not entertain the writ, the inquiry, whether the present was a proper case for the exercise of a power it did not possess, was clearly superfluous.

Judge Story, indeed, was doubtless gratified to obtain the support of his associates in the controversy, and considered that his opinions were sustained; and on the 1st of January, 1845, he wrote to his son: —

"Yesterday I delivered the opinion of the court in a great bankrupt case from New Orleans, embracing the question of the nature and extent of the jurisdiction of the District Court in matters of bankruptcy. It was an elaborate review of the whole statute, and we sustained the jurisdiction of the District Court over all matters whatsoever, and recognized (as indeed was one of the points) the right of the court to grant an injunction to proceedings and suits in the State courts. The opinion covered the whole ground in *Ex parte Foster*, and also in the New Hampshire cases which have been so stoutly contested in the State courts. . . . I took great pains about it; and the court fully confirmed all my views. Judge Catron alone dissented."

And in the case of *Norton* v. *Boyd*, 3 How. 426, at the same term, the court affirm the opinion in the case of Christy. But when the writ of error in *Jenness* v. *Peck*, 16 N. H. 516, came before Judge Parker, he did not accept this opinion as binding or conclusive. He did not fail to observe that the bench was not full, nor the court unanimous; and he did not admit that the declarations in the opinion as to the power of the District Court were necessary to the decision of the case, or consistent with themselves. He denied the power of the District Court to issue the order pleaded; and held that it imposed no duty upon the sheriff, and furnished no answer to the replication.

Here the controversy slept until, through the slow movement of its docket, the Supreme Court of the United States reached the writ of error by which the defendants carried the case before it.

Story had died. Woodbury, an associate of Parker at the bar, his predecessor on the bench, had taken the place of Story. But the court, with this exception and the addition of Mr. Justice Grier, was constituted as it had been when the opinion was delivered to which the letter already quoted referred. Parker, although not literally Story's lineal successor, sat in the seat from which he had spoken to his pupils. At the January term in 1849, Mr. Justice Grier delivered the opinion of the court, then full, in the case of *Peck* v. *Jenness*, 7 Howard, 612, without any indication in the report of any dissent, sustaining the decision of Judge Parker, and declaring, 1. That the attachment was "a statute lien, and therefore as much protected by the general language of the proviso as a common-law lien. 2. That this lien could not be defeated by the interposition of the plea of bankruptcy as a bar to a judgment in favor of the attaching plaintiff. 3. That the District Court had no supervisory power over the State court, either by injunction or the more summary method pursued in the case. No allusion is made in the opinion to the case of *Ex parte Christy*, or to the opinions of Judge Story; although Judge Grier remarks that "an attempt to enforce the decree set forth in the rejoinder would probably have been met with resistance, and resulted in a collision of jurisdictions much to be deprecated." Mr. William W. Story, in his Life of his father, speaking of the Bankrupt Law, says: —

"To its exposition my father devoted himself with great zeal, and wrote out a large number of elaborate judgments. Among them may be men-

tioned the exhaustive judgment in '*Ex parte Foster*' (2 Story, R.) on the meaning of the clause in the Bankrupt Act, saving all liens, in which he went into a very full investigation of the nature of equitable, common law, and maritime liens, and decided that an attachment on mesne process did not constitute a lien in the strict sense of that term."

He also inserts the letter already quoted: but, although the Life bears the imprint of 1851, no allusion whatever has been found to the decision of the Supreme Court in 1849; an omission, not necessary for Judge Story's honor, of a recognition which he would generously and promptly have accorded to his able antagonist.

"The decision in that case," writes an eminent lawyer and judge of New Hampshire, "was received here in February, 1849. Judge Parker was then attending the Court of Common Pleas in Sullivan County, at Newport, (where he had been employed in the defence of several suits, in which I was counsel for the plaintiff). Judge Parker made his appearance in court on the first day of the term, and, I think, the first term in that county after he left the bench. The attendance happened to be unusually full. I think I never saw any effect more dramatic than when he arose first to address the court; and the attention was breathless. He tried and argued two causes to the jury, and his whole conduct of those causes seemed to me an exhibition of skill nearly perfect. His arguments were thorough and complete; and, during the last, my associate . . . was in despair."

On the 20th day of January, 1848, Judge Parker was married to Mary Morse Parker, daughter of Elijah Parker, Esq., of Keene, N. H. In November, 1847, he had been appointed Royall Professor Law in the Dane Law School. He accepted the invitation; and on the 25th of June, 1848, — just ten years after his appointment to the office of Chief Justice, — resigned that post, and soon after changed his residence to Cambridge, Mass. The duties of his new life were at first so laborious, that he turned a longing eye back to the home and familiar labors he had left; but, as he became more accustomed to these duties, they became more easy and agreeable. His pupils found in him a thorough and faithful teacher; and many members of the profession, scattered throughout the United States, to-day bear witness to the benefits of his instruction. He was patient, assiduous, and accurate, and stored with the practical experience of a long professional and judicial life. The records

of his official career show a wide and varied list of subjects upon which he was called to aid his pupils.

The Commentaries of Chancellor Kent, the Law of Shipping, Agency, Pleading and Practice, Wills and Administrations, Bailments, Corporations, Equity Jurisprudence, Equity Pleading, Evidence and Practice, Real Property, the Domestic Relations, Constitutional Law, the Jurisprudence of the United States, Currency, and Writs of Error, at different times, furnished a wide scope for the time and capacities of the best lecturer and teacher, while the Moot Courts served to keep alive his judicial habits for their benefit. In such a round of duties there is little to occupy the pages of a biographical sketch ; and it does not require many words to describe the thorough and exact learning, the practical experience, the patient and courteous consideration for his pupils, the strong sense of duty, the fearless and independent judgment, which made his twenty years' service in this position perhaps more widely useful than even his judicial life in New Hampshire.

His labors were not confined to the school. He shared with his colleague, Professor Greenleaf, the representation of Cambridge in the Constitutional Convention of 1853. In this convention he took an interest in the discussion of important questions: among them may be mentioned that upon the vacancy in the representation from the town of Berlin, a question apparently of no great importance, but which involved the fundamental principles of the origin, authority, and existence of the Constitutional Convention; upon the judiciary, on the qualifications of voters, the encouragement of literature, and the rights of juries.

In one of the debates he said the people of Massachusetts "undertook to solve the problem of self-government, to establish a government, not distinct from, and adverse to, the people, but a government of the people themselves, to be administered by and through the people." We quote these words, to set them in juxtaposition with the celebrated passage from Abraham Lincoln's address at Gettysburg in 1863: "That government of the people, by the people, for the people, shall not perish from the earth:" and the earlier definition, in 1850, by one of his name, Theodore Parker, of democracy: "That is, a government of all the people, by all the people, for all the people."

In 1855 he was appointed a member of the Commission for the

Revision of the Statutes of Massachusetts. Owing to the illness of one of his two associates, the responsibility of the work was thrown upon himself and the other, — Hon. William A. Richardson, since Secretary of the Treasury. The result of their labors, during some four years, has governed the Commonwealth since it took effect in 1860 in the General Statutes of Massachusetts.

Of any such work, the merits and defects of which, passing through so many hands, from inception to completion, cannot, without great difficulty, be assigned to any single person, it would be too much to say that it is without defects; but the student of the Massachusetts reports since the enactment of the General Statutes cannot fail to be struck with the silent testimony borne to their excellence by the infrequency of judicial criticism, and by the rarity of the errors detected by the collision of private interests developed in legal controversies. Caleb Cushing, who was a member of the House of Representatives during the progress of the revision, about to engage in a similar labor upon the Laws of the United States, sent his secretary to Professor Parker to ascertain from him the plan which he adopted in the performance of his work, declaring it the best model and guide for the Federal code.

He did not stand aloof from the exciting questions of law or politics which the times presented, nor did his whitening locks indispose him to contend for the cause he believed to be right. He presided at a meeting held in Cambridge after the assault upon Mr. Sumner; and *The Edinburgh Review* for October, 1856, thus describes his speech on that occasion: —

"But most remarkable of all the speeches made at this meeting was that of the Ex-Chief Justice of New Hampshire, and President of the Law School, who took the chair. New Hampshire is, of all the Northern States, the most conservative in spirit. She clings to the common law as she received it from England. She clings to the traditions of the early democracy. So steadfast has she been to her old gods, that she has received the name of the 'Granite State.' And New Hampshire has sent from her borders no sounder lawyer, no more conservative politician, than Chief Justice Parker. When the spirit of New England was alive with the excitement of opposition to the Fugitive-slave Law, Chief Justice Parker, firmly believing that law to be constitutional, did not hesitate to lend it his support. Such a man, as he himself observes, 'can hardly be suspected of an immoderate desire

for agitation.' Yet Chief Justice Parker made a speech at this meeting in Cambridge, which, for earnestness, and solemnity of denunciation, has not been anywhere surpassed. We should be glad to quote the greater part of this address, which is at once a model of temperance in the utterance of righteous indignation, and a most pregnant sign of the times in America. But this our limits forbid; and we must content ourselves with setting before our readers the following most impressive words which this lawyer and judge, this gray-haired, grave, and conspicuous man, felt himself warranted, by the importance of the crisis, in addressing to his fellow-citizens, who know full well, that, whatever he may say, is said with deliberate and honest conviction: 'If all measures that can be constitutionally taken to assert our constitutional freedom shall fail, what then? God, in his infinite mercy, avert such a catastrophe! But if a wise Providence should permit the madness and violence of a few to tear away from the Constitution the safeguards of freedom upheld by law, leaving only the forms of a free government in place of the substance which we have fondly hoped was obtained, it is not for us now here to say what shall then be done. For myself, personally, I am, perhaps, known to most of you as a peaceable citizen, reasonably conservative, devotedly attached to the Constitution, and much too far advanced in life for gasconade; but, under present circumstances, I may be pardoned for saying that some of my father's blood was shed on Bunker Hill at the commencement of our Revolution, *and that there is a little more of the same sort left, if it should prove necessary for the beginning of another!*'

"Deeply, indeed, must the independent spirit of New England have been stirred when such words can be wrung from such a man in such a place! The violence of the South, significant as it is, is much less significant than the slow, intenser wrath of the North."

But, while he was a steady opponent of the Rebellion, he did not feel that this forbade independent criticism of acts which seemed to him violations of the Constitution he taught, and desired to maintain. During the war he published several occasional pamphlets on constitutional questions, marked with his characteristic vigor and independence.

He was an interested member of the Massachusetts Historical Society, as well as of those of New Hampshire and Connecticut, and made valuable contributions to the history of New England

A list of some of his published productions is appended.[1]

[1] Report of the Trial of Daniel H. Corey for Murder. Newport, N. H., 1830.

Charge to the Grand Jury, with a Brief Sketch of the Character of Chief Justice William M. Richardson. Concord, N. H., 1838.

A Charge to the Grand Jury upon the Uncertainty of the Law, and the Duties of

An interesting scene occurred at a lecture on Constitutional Law, a year or two before the late civil war. Professor Parker, alluding to the expulsion of the Hon. Samuel Hoar from Charleston,

those concerned in the Administration of it. Delivered on the Circuit, 1841 and 1842. Concord, N. H., 1842.

Progress: an Address before the Phi Beta Kappa. Hanover, N. H., 1846.

Law of Homicide (Dr. Webster's Case). 1851.

Chancery Jurisdiction, and the Publication of Letters, in Am. Law. Reg. June, 1852.

Daniel Webster as a Jurist. Address to the Students in the Law School of the University at Cambridge, 1853.

The Sumner Outrage. A Full Report of the Speeches at the Meeting of Citizens in Cambridge, June 2, 1856, in Reference to the Assault on Senator Sumner in the Senate Chamber at Washington [containing a Speech by Hon. Joel Parker]. Cambridge, 1856.

Non-Extension of Slavery, and Constitutional Representation. An Address before the Citizens of Cambridge, Oct. 1, 1856. Cambridge, 1856.

Criticism Criticised; intended as a Supplement to The Law Reporter for January, 1859. Boston, 1859.

Opinion on Some Questions involved in the Case of "the Proprietors of the Bridges over the Rivers Passaic and Hackensack *v.* The Hoboken Land and Improvement Company," Jersey City, N. J. 1860.

Personal Liberty Laws (Statutes of Mass.) and Slavery in the Territories (Case of Dred Scott). Boston, 1861.

The Right of Secession. A Review of the Message of Jefferson Davis to the Congress of the Confederate States. Cambridge, 1861.

Habeas Corpus and Martial Law. A Review of the Opinion of Chief Justice Taney in the Case of John Merryman. 1862.

The Domestic and Foreign Relations of the United States. Cambridge, 1862.

A Letter to the People of Massachusetts. Cambridge, 1862.

The Character of the Rebellion, and Conduct of the War. Cambridge, 1862.

Constitutional Law, with Reference to the Present Condition of the United States. Cambridge, 1862.

International Law. Case of the Trent: Capture and Surrender of Mason and Slidell. Cambridge, 1862.

Constitutional Law, and Unconstitutional Divinity: Letters to Rev. Henry M. Dexter and to Rev. Leonard Bacon, D.D. Cambridge, 1863.

The War Powers of Congress and of the President. An Address delivered before the National Club of Salem, March 13, 1863. Cambridge, 1863.

Revolution and Reconstruction. Two Lectures delivered in the Law School of Harvard College, Jan. 1865 and Jan. 1866. New York, 1866.

The Origin, Organization, and Influence of the Towns of New England. A Paper read before the Mass. Hist. Soc. Dec. 14, 1865. Cambridge, 1867.

The Three Powers of Government, the Origin of the United States, and the Status of the Southern States on the Suppression of the Rebellion. The Three Dangers of the Republic. Lectures delivered in the Law School of Harvard College and in Dartmouth College, 1867–68 and '69. New York and Cambridge, Riverside Press, 1869.

The First Charter and Early Religious Legislation of Massachusetts. A Lecture in a Course on the Early History of Massachusetts, by Members of the Massachusetts

stated that between independent States it would have afforded cause for a declaration of war. There were a large number of Southern students among his hearers, who received the statement with hisses, which were answered by applause from the Northerners. Judge Parker, apparently at a loss to account for this riotous interruption, and hurt and indignant at the rudeness of his audience, with feeling and firmness declared that he would not resume his lecture until suitable apologies were made. Full apologies having been made by the offending students, he resumed, and continued it as calmly as before.

He also held a professorship of law in Dartmouth College as a non-resident from 1868 to 1874; lectured on Constitutional Law before the senior class there, and at the Columbian Law School in Washington; was Professor of Medical Jurisprudence in the Medical School of that institution from 1847 to 1857, and lectured on that subject in the Boylston Medical School in Boston in 1851, and in the Medical College in New York.

He received the degree of LL.D. from his Alma Mater in 1837, and from Harvard College in 1848; was a trustee of Dartmouth College from 1843 to 1860, and a Fellow of the American Academy of Arts and Sciences.

One of his pupils, now applying successfully Professor Parker's teachings in a neighboring city, has kindly furnished us with the following description of him in the School: —

"The writer of this note had been, for years before ever entering the Law School, familiar with the face and figure of Judge Parker in the streets of Cambridge, and had been accustomed to look on him as the embodiment of an unknown and shadowy mystery, — the learning of the law. And, by the students of the Law School, Judge Parker was generally looked on as the deep repository of all legal knowledge. Though he was a man of genial feelings, yet his general manner was one of extreme quiet; and he made no efforts for personal popularity. But he had from all his pupils, at all times, the deepest respect, and, from those who were so fortunate as to have with him a personal acquaintance, the warmest affection.

Historical Society, at the Lowell Institute, Boston. Delivered Feb. 9, 1869. Boston, 1869.

The Law School of Harvard College. New York and Cambridge, Riverside Press, 1871.

An Address delivered at the Centennial Celebration in Jaffrey. Winchendon, 1873.

"As a mere teacher of the general number of young law students, some of Judge Parker's colleagues have been his superiors. To such as were eager laborers in the learning of the law he was a most valuable instructor. All who ever heard him will recall the quiet and dignified manner in which he entered the lecture-room, paying no apparent attention to the short round of applause which by custom had become the ordinary salutation to the professors on their entrance. His hat was laid by his side. There was no elaborate introduction; an utter absence of ornament, or of any attempt at literary embellishment. But the lecturer's hour was given to the clearest statement of legal principles, the keenest dissection of cases, and oftentimes to the warmest discussion of what he deemed heresies of the law. His manner in the lecture-room, as elsewhere, was almost invariably one of complete repose. But when defending some of his statements of legal points that might have been at some time questioned, or when attacking principles which he deemed unsound, the tone of his voice would become warm; the manner would still be utterly free from the least approach to violence; but the mere statement of theories and principles was abandoned, and his discussions took the shape almost of personal combats. Judge Parker fought for a principle of law as other men fight for life, or family, or for a nation. Some of his decisions, given while on the bench of the Supreme Court of New Hampshire, were in after-years the subject of long-continued discussion by courts and counsel. Some opinions of other judges were, for many years, to Judge Parker matters of the deepest interest and the warmest criticism. In all those cases, though not examining these questions as an advocate, Judge Parker always made his discussions matters of warm personal feeling. And if, at any time, there had been criticisms of his views which he thought in the least unfair, when these views became at any time the subject of his lectures, the students of the Law School were entertained with some of the choicest sarcasm, in the purest English, that can be found in legal literature. At the opening of the war, some of Judge Parker's views on constitutional questions became the subjects of very severe and unjust comment. One of his lectures, wherein he explained and defended those views, the writer well remembers as a masterpiece of legal reasoning and dignified eloquence.

"Ordinarily, however, Judge Parker, in his lectures, confined himself to the simplest possible statement of the principles of the law. His legal learning was wide and exhaustive. Pleading and constitutional law were apparently his greatest delights; and, in the whole country, the profession could show scarcely his equal in those branches. It was generally understood that Judge Parker had written, or at least collected the material for, an elaborate work on Pleading. And on one or two occasions he humorously lamented the untimely death of his work before its life began, from the ruthless destruction of the science of pleading, brought about by the

legislation of most of the States, and the very general adoption of those devices of ignorance, called Codes, which purport to be intended to simplify the science of the law, and brush away its useless antiquities.

"It was said of Judge Parker, that, while on the bench, he was occasionally given to deciding cases on points that had escaped the penetration of counsel. No one ever in such cases, aside from the litigants themselves, questioned the soundness of his decisions. But the thing certainly did happen, not unfrequently, in cases heard before him in the Moot Courts of the Law School. His statements of fact in the cases given to students for argument were always full and exact, and always fairly showed to a lawyer the points in issue. Yet to the sucklings of the law, by whom the cases were to be argued, the points to be discussed were not always apparent; and there were sometimes humorous scenes, when, after elaborate arguments, laden with Southern eloquence or Western rhetoric, Judge Parker would, in the most courteous and kindly manner, quietly suggest, in his opinion, that there might, by possibility, be points in the case of more controlling power to the judicial mind than those which had been argued.

"The inquiries put by law students to their professor are not always of the most definite or edifying character. Questions of all kinds, however, that were put by any student to Judge Parker, invariably received from him the most careful consideration that could have been given to doubts suggested on an important case by the most learned jurist. A vague and rambling query, put by an ignorant or thoughtless student, was always met by him with careful and exact definition, and doubtless often became the means of firmly fixing a legal principle in the minds of his students.

"It will be matter of deep regret to Judge Parker's pupils, that, with his ample learning, and keen intellect, he never discharged what is somewhere called the debt the lawyer owes to his profession, — that he has left behind him no finished written work on any branch of legal science. A work written by him would have been, not a mere digest of cases, but a masterly statement of principles. Of such works, the profession, in these days of multitudinous reports, is greatly in need. Certainly, if Judge Parker had seen fit to leave any work on any legal subject, *his* debt would have been fully paid and satisfied. At least, to all who studied under him, he gave a noble example. Those who had the happy fortune to study under his guidance at Cambridge, will keep among their most pleasing memories the hours passed under the teachings of that honored master of jurisprudence. They will recall his kindly manner, his encouraging counsel, his words of wisdom, and his clear and accurate statements of the principles of the law, as landmarks in the story of their legal lives; and they will have good reason for self-congratulation if they keep even remotely near to the high standard, set them by that ever-respected teacher, of high integrity, and deep devotion to what they most fondly think the noble profession."

After twenty years' service in the Law School, he resigned his professorship in 1868, but still continued active in the charge of important interests.

A few happy and honored years remained to him, to be enjoyed with those whom he had made happy. In commemorating the twenty-seventh anniversary of his wedding, he spoke with feeling of his domestic happiness, continued for a length of time to which he had not dared to look forward. But this anniversary was not destined to recur again. "His eye was not dim, nor his natural force abated." He was still the trusted counsellor upon whom others leaned, and to whom they looked for guidance. Not from any weakness of years, but by the force of an active disease, borne with patience and cheerfulness, he passed away on the 17th of August last.

The circumstances of his life and profession were not such as to furnish a variety of incidents and anecdotes for a biographer. "He was an even man," writes a friend, — who furnished "nothing to hang lies upon." "It has been justly remarked," says Lord Mahon, "that of General Washington there are fewer anecdotes to tell, than, perhaps, of any other great man on record. So equally framed were the features of his mind, so harmonious all its proportions, that no one quality rose salient above the rest. There were none of those chequered hues, none of those warring emotions, in which biography delights. There was no contrast of lights and shades, no flickering of the flame: it was a mild light, that seldom dazzled, but that ever cheered and warmed." Without applying all this to Judge Parker, it is nevertheless true that the absence of variety and interest, or of striking features and unusual elements, may often consist with a closer approach to perfection than their presence demonstrates.

He was a man of religious convictions, bred in the faith of New England; and though not prone to press his views upon others, or parade his devotion, he left no uncertainty in regard to it. And yet he was of a catholic liberality, not unwilling to find excellence in others. He was ready and active in good works; affectionate and tender, without excessive demonstration; generous and benevolent, without ostentation; a good citizen; a most thoughtful, kind, and considerate neighbor; and a faithful friend.

His lawyer's office in the country, so often a spot dark and

dingy to common eyes, was brightened by his love for flowers, in which he sought refreshment from his labors.

"A sketch of Judge Parker," says a friend, "which left out his love of flowers, would be imperfect. When I first knew him, he was said to be a profound student, his office-lamp burning far into the night-hours, and his reputation already high as a legal adviser. But even then he took time to attend to a garden, where he had every variety of blossom in its season; and his great delight was in sending roses of countless species, and fruits of rare excellence and flavor, to his less-fortunate friends, or in exchanging floral novelties with those who, like himself, found ever-new delight in such pursuits.

"This delicate and usually feminine taste in Judge Parker was united, as I think one often sees it, with a chivalrous sentiment in regard to women. His standard for them was very high, and he had a keen enjoyment of their society. Indeed, a trait not observable in him, if seen only through a legal atmosphere, was a certain vivacity of temperament, which gave him ready sympathy with such familiar discourse and lively anecdote as come with close social intimacy. I should call him a very receptive, very sympathetic man; ready to take up the burdens of his friends, and bear them to triumphant issues; giving his best to help them, whether in a knotty law point, or in the latest experience of grape-culture. 'If this never does *me* any good, it will be good for posterity,' was his answer to those who saw him spending time and money in gardening experiments.

"In illustration of the chivalry of which I have spoken, an anecdote is related by some gay friends, who, looking from their windows at dusk for the young lawyer's arrival, saw him carefully conducting the tottering steps of a deformed pauper along the icy road and round the house to the back door, having courteously drawn her arm through his own to steady her steps.

"You could not know him much without seeing, that, under the mail of the chief justice and the law professor, there throbbed a heart of acute sensibility and boundless tenderness. I mention some of these traits, not because they are at all unusual in law professors, but because Judge Parker's general manner, which was rather calm and cold, gave but slight indications of some of his finest traits of character."

The lawyer was not always shut up in his office, even with his flowers. He enjoyed society, in which he was a favorite; and those who knew only the gravity of the judge and professor would not appreciate the pleasure which he found in the lighter amenities of social life. Judge Story was fond of poetical composition; Mansfield, if we accept the often-quoted lines of Pope, sacrificed the Muses to the law; and even Lord Eldon conde-

scended to verse. The following lines, addressed to Judge Parker nearly fifty years ago by a lady, elicited from him the reply which succeeds them; with which we venture to lighten these pages, as a token, that, like Mansfield and Story, he sometimes wandered from *black-letter* to light letters: —

THE VISION.

I.

I'd be a lawyer, gifted with power,
Clients to draw to my little retreat;
I'd pore over Blackstone for many an hour;
With pleas and rejoinders fill many a sheet:
I'd win every cause, and would eloquence shower;
Convince judge and jury with arguments meet.
I'd be a lawyer, gifted with power
Clients to draw to my little retreat.

II.

I ne'er would be drawn from this science away
By the pleadings of friendship or soft smile of love:
I would study and think for my clients all day,
And all the delights of fidelity prove.
To fame I would climb, and would toil the steep way,
Nor shrink from the labor if honor approve.
I'd be a lawyer, I'd be a lawyer,
Nor shrink from the labor if honor approve.

III.

Then say, what can equal the advocate's joy,
The oppressor to thwart, the oppressed to defend?
The triumphs of justice have little alloy;
Fame, honor attending, and wealth in the end:
A name for my country, (how pure is the joy!)
Untarnished and bright, such a course would attend.
I'd be a lawyer, I'd be a lawyer,
The oppressor to thwart, the oppressed to defend

THE REALITY.

I.

Oh! I am a lawyer, and live in a den
Called an office, a snug and a quiet retreat:
It is sixteen feet one way, the other but ten;
And the temperature's not far above "fever-heat."
I watch there for clients; but that's all a hum:
Like sprites, from the "vasty deep" called, they don't come.

II.

I have pen, paper, ink, and blank writs a good store,
Three chairs and a table, a day-book and docket;
Get five writs a term, a defence or two more;
Am *plus* in my idleness, *minus* in pocket.
To persuade court and jury I argue all day,
And convince them it's right to decide — t'other way.

III.

So much for the profit and pleasure. And now
The account as to honor pray let us be casting:
That there's fame to be had, I most freely allow;
People "damn" the profession "to fame everlasting;"
They'll tell you a lawyer but seeks for the pelf,
And for that will out-Herod the D—l himself.

Aug. 9, 1828.

"Were I to indicate that quality in him," writes an old pupil, "which impressed me most, I would say he was the most manly man I ever met. No one could be in his presence without feeling the stimulus to noble and high endeavor."

The traits of his character were distinct and vigorous, and such as to make his influence felt in the conspicuous positions which he filled. His labors in these positions were assiduous, faithful, and exhaustive, guided by judicious caution and deliberation, and maintained with untiring perseverance. He was a man of independent judgment and positive convictions. If he reached those convictions slowly, it was yet by a process which gave them an assured foundation, and left no want of firmness in their reception or position. Like Washington, he "decided surely, though he deliberated slowly."

He was guided by a high sense of the duties and responsibilities of a lawyer and a judge; and the general voice declared the success with which he conformed his practice to his ideal.

He contributed largely to the sound foundation of the science of jurisprudence in the State whose laws he administered, and spread his influence widely over the country through the pupils whose studies he guided and assisted.

The student of law, willing to give his days and nights to its acquisition, seeking to do good in his day and generation by its faithful administration, animated by a high ambition to win the approval of his fellows and the deserved reward of honorable

labors among them, if he looks for encouragement in his efforts, for a safe example and guide, and for incitements to faithful perseverance, may find them all in the life and career of Joel Parker.

The following extract from a letter written by a gentleman who has an hereditary right, as the son and grandson of men who held high judicial stations in New Hampshire, to speak of her judges, — himself long familiar with the courts and the bar of that State, — will interest our readers, and induce them to regret, as we do, that his pen is not more often employed for their enjoyment: —

"In 1832, the courts were remodelled by an Act of the Legislature, reputed to have been framed by Joel Parker, who, on its taking effect, gained a seat upon the bench as associate to Richardson, upon whose death, in 1838, he became Chief Justice.

"Previous to this time, no causes were tried without the aid of some one or more of the circuit lawyers to argue them; and the distinction between barrister and attorney was thus in effect recognized, and appeared fixed. Among the distinguished men who rode the circuits in Richardson's time were Mason, Richard Fletcher, Sullivan, Bartlett, Ezekiel Webster, and Woodbury. Judge Smith and Daniel Webster withdrew at an early period; and Joseph Bell, Cutts, and Christie, all able lawyers, did not often, I think, pass the limits of their respective counties. They were all men of great ability and imposing prestige, the seniors of Parker, and formed for him a formidable standard; but in their subduing presence he rose to their rank, and gained a share of circuit practice.

"I first saw him, without, at the moment, knowing who he was, in the fall of 1829, arguing a question of law in a case of no great importance. His brief was laden with a harvest of authorities, and his argument was conducted with the same untired diligence with which his preparation had been made. I paid the more attention from having taken him for a younger man, unknown; and remember the occurrence from the despair I felt. For I was looking forward in those days, and the years that lay between us seemed but few. My feelings did not take an ungenerous turn, and the sympathy that was born of a mistake did not vanish when it was corrected. I became an attentive listener to his arguments to the jury. To one less attentive they were a prolonged murmur, without a ripple of gayety, imagination, or warmth; but they had a persuasion, derived from a skilful arrangement of the evidence, and a persistent, laborious application of it to the theory of his case; in all of which he was so deliberate, so full, so profuse of comment, that artistic oratory would have been held to be superfluous, while it was manifest that he was aiming at something very different from the amusement of an audience. And so, indeed, it was. He had so

well measured his own faculties, and had so completely learned what hardened stuff it is that impedes the access of an idea to the ordinary mind, that, without oratorical display, he was really as convincing and as effective an advocate as any one of his contemporaries.

"The life of Judge Parker, from the time of his appointment to office in 1833, is as well known to others as to myself. To many it is better known. It may not, however, be superfluous for me to say, that the act of 1832, which remodelled the courts, conferred on the Superior Court full chancery powers, where none had existed before; and that, from the first, that class of cases appeared to have been assigned mainly to him. It is not easy for the present generation of lawyers, bred as they all have been to this branch of jurisprudence, to perceive how much was implied in such an arrangement. Equity, in its broader principles recognized by courts of law, had, of course, received some amount of attention from all lawyers. But chancery pleading and practice, and, in general, the method and conditions upon which the refined and versatile principles of equity are directly applied by the chancellor to the solution of controversy and the protection of right, were as much a mystery to nearly every lawyer in the State as any science can be to the unlettered. The older men would not learn it; and it was not until Parker had instructed the younger, that the practice of equity gained any considerable footing in the State. It is no disparagement of his fine attainments to say, that he himself groped cautiously along its untried passages; or even to add a question, whether, in rare instances of unfortunate decision, heresies may not have become established through the great weight of his judicial character. But his decisions on this, as on other branches, are deeply learned, and cannot fail to be of great assistance to the student, even if he fails to be satisfied with their conclusions.

"Parker shone above most judges of his time in giving a case to the jury. It is not enough to say that he was lucid and thorough in summing up. He possessed courage, and imparted it. He had a living conscience, and animated that of the jury. He indicated the true limits of their function, and so made it easy; eliminating what was mere dispute, and giving, in cases of doubt, all possible aid for weighing evidence and estimating probability. In the language of one who afterwards filled his place, 'he held up a jury.' They always felt the presence of a pure mind and of a friendly counsellor when they listened to his addresses. He was also remarkably lucid and satisfactory in drawing up his cases; and I never heard complaint from any counsel that his points had not been well presented.

"Of the men, now deceased, who gained eminence at the bar of New Hampshire while Parker was upon the bench, were Perley and Bellows, who afterwards became, successively, Chief Justices; James Bell, not inferior to either as an accomplished practitioner; John P. Hale, the dis-

tinguished senator; Jonathan Smith, who died at the dawn of an excellent reputation; Sullivan, the third Attorney-General of the name; and John S. Wells, whose kindred gift of speech denoted a common lineage with them. Harry Hibbard was then postponing, in the interest of a political party, the distinction he afterwards won; though it was plain to many that his crown was in the garden. I am not forgetful of Samuel D. Bell, who was older, and had already attained to the rank he continued to hold as a lawyer of learning and diligence; nor of several gentlemen who were, during and subsequent to the period referred to, appointed to the bench in advance of a reputation for professional ability, which would probably have been acquired by them had such promotion been deferred.

"With all whom I have named I was acquainted. My intimate and confidential relations with most of them enable me to attest to their very high appreciation of Parker; and I use advisedly a word to denote a form of thought appropriate to men who are incapable of vague admiration and of unfounded praise.

"In gathering from an imperfect memory such things as I have been able to recall in my endeavor to add a line to the portrait of our venerated friend, I have taken up a few — perhaps too many — of such as from their early dates appeared least likely to have fallen within your observation, or to have enjoyed the attention of many who have been more interested in the later scenes of his life. For this you will perceive an obvious reason. Perhaps you will find another, of whose force I am less conscious, and may detect the tokens of a period of life which begins to be thronged with the images of its early stages, as the surveyor, in token of having nearly made up his field-book, finds himself in the midst of the familiar monuments that surround his place of beginning.

"Ever your faithful friend,

"ARTHUR LIVERMORE."

G. S. H. . . .